

Tennessee Department of State  
Division of Business Services

# FILING GUIDE

## LIMITED LIABILITY COMPANIES



Riley C. Darnell  
Secretary of State

2002 Revised Edition

**NOTE: Pages 69-100 of the Limited Liability Companies Filing Guide, containing filing forms and the fee schedule, are not included in this Internet version of the Guide. For these items, please refer to other links under the Corporations section of our website.**

# Tennessee Department of State Division of Business Services

## **MISSION**

**The mission of the Division of Business Services is to execute the statutory processing and recordkeeping duties of the Secretary of State relating to businesses in Tennessee.**

## **GOAL**

**Our goal is to provide our customers with document processing services that are prompt, accurate and complete.**

The Department of State is an equal opportunity, equal access, affirmative action employer. Department of State, Authorization No. 305254, 2000 copies, October 2002. This public document was promulgated at a cost of \$2.99 per copy.

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## INTRODUCTION

Over 26,000 active limited liability companies (LLCs) currently exist in Tennessee. New limited liability companies are formed at a rate of 5,000 per year.

The Secretary of State is responsible for receipting and maintaining many of the documents that these companies are required to file with the State of Tennessee. Filing documents include articles of organization, applications for certificate of authority, annual reports and other instruments mentioned in this filing guide.

The Division of Business Services is the section of the Department of State that is responsible for executing the duties and functions of the Secretary of State relative to business filings. In addition to receipting and maintaining business documents, the Division provides information to the public relating to filed documents.

On an annual basis, the Division of Business Services completes over 190,000 filing transactions, responds to over 175,000 telephone inquiries, and provides over 30,000 certifications or copies of filed documents. In fiscal year 2001-2002, the Division collected over 14.2 million dollars in filing and certification fees.

The Division of Business Services also maintains approximately 8.5 million business documents on 4,500 rolls of microfilm.

This publication is intended as an **introductory guide** to the filing of limited liability company documents that are required or permitted to be filed with the Division of Business Services under the Tennessee Limited Liability Company Act or under the Tennessee Nonprofit Limited Liability Company Act of 2001. The guide does **not** include information on any limited liability company filing requirements pertaining to other state or federal agencies.

Please also note that this publication is not intended to be a comprehensive manual for establishing and maintaining a limited liability company in Tennessee and is not a replacement for the statutes or for legal or other professional advice.

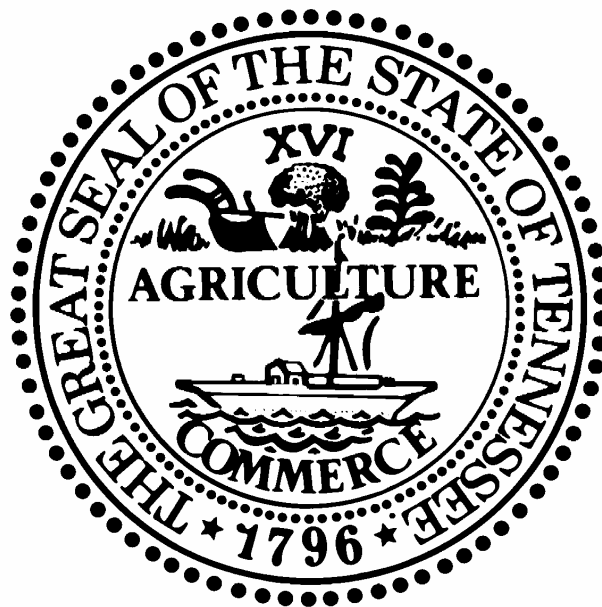
The Tennessee Limited Liability Company Act can be found in the Tennessee Code Annotated, Sections 48-201-101 through 48-248-606. The Nonprofit Limited Liability Company Act of 2001 can be found in Sections 48-101-701 through 48-101-708.

Unless otherwise noted, the filing requirements in this guide applying to limited liability companies (LLCs) also apply to professional limited liability companies (PLLCs), and references to the term “LLC” include the term “PLLC.”

Unless otherwise noted, the filing requirements in this guide applying to limited liability companies also apply to nonprofit limited liability companies.

**This publication reflects current statutory requirements through the 2002 Regular Session of the 102<sup>nd</sup> General Assembly.**

October 1, 2002





# **DOCUMENT FILING**

## **CUSTOMER SERVICE INFORMATION**

- **FORMS AND FEE SCHEDULE.** Forms and a fee schedule are available from the Division of Business Services and may be obtained from our Internet website (see below), by contacting our office at **615-741-2286**, or in person on the 6<sup>th</sup> floor of the William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee. For your convenience, an index of forms, copies of applicable forms, and a fee schedule are included at the end of this filing guide.
- **INTERNET WEBSITE.** The Division of Business Services has a World Wide Web page that currently contains:
  - General information about the Division of Business Services
  - Forms (other than the annual report) and fee schedules. Some of the forms may be filled in and printed directly from the website.
  - Filing guides and information brochures
  - E-mail access to the Division (but currently **not** for document filing)
  - E-mail change of principal office mailing address
  - Searchable online Business Information and Business Name Availability databases

The Division's site may be accessed via the Secretary of State's home page at:

**<http://www.state.tn.us/sos/>**

- **MAILING ADDRESS.** The mailing address of the Division of Business Services is:

**State of Tennessee  
Department of State  
Division of Business Services  
312 Eighth Avenue North  
6<sup>th</sup> Floor, William R. Snodgrass Tower  
Nashville, TN 37243**

- **COUNTER SERVICE.** Customers may file documents or obtain certification services in person during regular business hours (8:00 a.m. until 4:30 p.m. (CST) Monday - Friday). The Division is located on the 6<sup>th</sup> floor of the William R. Snodgrass Tower, 312 Eighth Avenue North, Nashville, Tennessee. Directions to the office are available on our website (see above).
- **E-MAIL ADDRESS.** The Division of Business Services may be e-mailed by writing:

**Business.Services@state.tn.us**

- **FAX NUMBER.** The Division of Business Services fax number is:

**615-532-9870**

- **DATABASE INFORMATION.** The following information is maintained “on-line” on the Division of Business Services computer database:

- LLC Name
- Assumed Names
- Date of Organization
- Status of LLC
- Place Organized
- LLC Duration
- Fiscal Year Closing
- Amendments
- Cancellation Date
- Withdrawal Date
- Filing date
- Date of Qualification
- Status of Certificate  
of Authority
- Registered Agent
- Registered Office
- Principal Office
- Annual Reports - date  
due & date filed
- Reinstatement date

The database information is available from our online searchable Business Information database at [www.state.tn.us/sos/](http://www.state.tn.us/sos/). In addition, telephone inquiries may be made directly to the Division of Business Services from 8:00 a.m. until 4:30 p.m. (CST) Monday - Friday. **The number to call for this information is:**

**615-741-2286**

- **CERTIFICATION INFORMATION.** The number to call for information on how to obtain certification services is:

**615-741-6488**

- **GENERAL TELEPHONE NUMBER.** For other assistance relating to LLC document filing, please contact us at:

**615-741-2286**

- **TAX INFORMATION.** The following departments should be contacted as appropriate for tax information:

State franchise & excise tax or sales tax: Tennessee Department of Revenue. **The number to call is 615-253-0600 or 800-342-1003.**

State unemployment tax: Tennessee Department of Labor & Workforce Development. **The number to call is 615-741-1315 or 800-344-8337.**

- **COPIES OF STATUTES**

The Division of Business Services does not provide copies of the Tennessee Limited Liability Company Act or Nonprofit Limited Liability Company Act of 2001 and related statutes. This information usually is available at public libraries, law libraries and other locations that have access to the Tennessee Code Annotated (TCA). An unannotated version of the Tennessee Code currently is available on the Internet at [www.michie.com/](http://www.michie.com/).

Certified copies of specific statutory provisions may be obtained by contacting the Tennessee Department of State, Administrative Procedures Division, at 312 Eighth Avenue North, 8<sup>th</sup> Floor, William R. Snodgrass Tower, Nashville, TN 37243, telephone number **615-741-7008**. The cost is \$2.00 per certification and \$0.25 per page.

Lexis Publishing currently publishes a reference manual entitled ***Tennessee Corporations, Partnerships and Associations Law Annotated***. For purchasing information, contact Lexis Publishing, PO Box 7587, Charlottesville, VA 22906-7587, or call 1-800-562-1197.

## **GENERAL FILING INFORMATION**

- **FORMS.** The Division of Business Services provides forms for many filings under the Tennessee Limited Liability Company Act and other related statutes. The use of these forms is encouraged to ensure that all of the statutory requirements for filing are met. However, the use of these forms (other than the annual report form) is NOT mandatory; any document properly executed that meets all of the statutory requirements will be accepted for filing.
- **RECEIPT STAMP.** Any document received by the Division of Business Services, regardless of the method of delivery, is endorsed upon receipt with a date and time stamp. This date and time become the official filing date and time if the document is accepted for filing.
- **IMAGING.** An original document received by the Division of Business Services is either microfilmed or optically imaged. After processing, the original document (except an annual report) is returned to the applicant.
- **FEE PAYMENT.** The document to be filed must be accompanied by the correct fee payment, with check, bank draft, money order or other such instrument made payable to the Tennessee Secretary of State.
- **DISHONORED CHECKS.** A check, bank draft, money order or other such instrument that is dishonored upon presentation for payment of any filing constitutes grounds for administrative dissolution or revocation of the LLC.
- **ACCEPTED FILINGS (other than annual reports).** A document accepted for filing by the Division of Business Services is marked “Filed,” stamped with the name and title of the Secretary of State, and returned to the applicant. An acknowledgment letter is also provided as documentation of the filing and the receipt of the appropriate fees.
- **REJECTED FILINGS.** A document rejected for filing by the Division of Business Services is returned to the applicant with a letter identifying the reason(s) for document rejection and acknowledging the receipt of the submitted fees. A copy of the rejection letter must accompany any filing resubmission. Any request for a refund of submitted fees should be sent in writing to the Division of Business Services.
- **MONTH CALCULATIONS.** In calculating time requirements under the Tennessee Limited Liability Company Act, a month means the time from any

day of any month to the corresponding day of the succeeding month, if any, and if none, the last day of the succeeding month. A period of two or more months means the time from any day of the first month in such period to the corresponding day of the last month in such period, if any, and if none, the last day of the last month in such period.

- **APPEAL RIGHTS.** A customer has the right under TCA §48-247-106 for judicial review of the decision of the Division of Business Services to refuse to file a document. Any judicial review must be conducted in accordance with the provisions of the Tennessee Uniform Administrative Procedures Act, found in Tennessee Code Annotated, Title 4, chapter 5.
- **MINISTERIAL DUTY.** The duty of the Division of Business Services to file a document is ministerial. The Division's action in filing or refusing to file a document:
  - Does not affect the validity or invalidity of the document;
  - Does not relate to the correctness or incorrectness of information contained in the document;
  - Does not create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect (however, see pages 16 and 21-22 regarding articles of organization and conversion); and
  - Does not establish that a document purporting to be an exact or conformed copy is in fact an exact or conformed copy.

**!!WARNING!!**

**Any person who signs a document, knowing it to be false in any material respect, with intent that the document be delivered to the Division of Business Services for filing, commits a Class A misdemeanor. Such action also constitutes grounds for administrative dissolution of the LLC.**

## **BASIC FILING REQUIREMENTS**

- A document must satisfy the requirements of the Tennessee Limited Liability Company Act and other related statutes before it can be filed with the Division of Business Services.
- Only documents required or permitted to be filed by the Tennessee Limited Liability Company Act and other related statutes can be accepted for filing with the Division of Business Services.
- A document must contain all of the information required by the Tennessee Limited Liability Company Act. It may contain other information as well.
- The document must be typewritten or printed in ink in a clear and legible fashion on one side of letter or legal size paper.
- The document must be in the English language. An LLC name need not be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign LLCs need not be in English if accompanied by a reasonably authenticated English translation.
- The document must be executed:
  1. By the chair of the board of directors of a domestic or foreign corporation, by its president, or by another of its authorized officers if a corporate action is taken, by the chief manager, a governor or another authorized manger if an LLC action is taken, by a general partner if a partnership action is taken or by the equivalent person of another business entity;
  2. By an incorporator or organizer, if the directors of an LLC or governors of a board-governed LLC have not been selected or the corporation or LLC has not been formed; or
  3. By a receiver, trustee other court-appointed fiduciary, if the business entity is in the hands of such a fiduciary.
- The person executing the document must sign it and state beneath or opposite the person's signature such person's name and the capacity in which such person signs.

- The document **may** but **need not** contain such items as an attestation by the secretary or an assistant secretary, and an acknowledgment, verification or proof.
- An annual report **must** include the date that the document is signed. All other documents submitted for filing **may** but **need not** contain the date the document is signed.
- The document should contain a statement that makes it clear that it is being filed pursuant to the Tennessee Limited Liability Company Act.
- No articles of organization or application for certificate of authority can be filed with the Division of Business Services unless the document designates the registered agent and registered office of the LLC. Thereafter, no other document can be filed with the Division of Business Services if, at the time of filing, the LLC does not have a registered agent or registered office designated (unless the LLC simultaneously files a statement designating the registered agent and/or registered office, as appropriate).

### **EFFECTIVE TIME AND DATE**

- In general, a document accepted for filing by the Division of Business Services is effective:
  1. At the time of filing on the date it is filed with the Division of Business Services, as evidenced by the Division's date and time endorsement on the original document; or
  2. At the time specified in the document as its effective time on the date it is filed.
- In general, a document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified.
  1. If a delayed effective date but not time is specified, the document is effective at the close of business on that date.



2. **A delayed effective date for a document may not be later than the ninetieth day after the date it is filed with the Division of Business Services.**
3. Due to their nature, the following documents may **NOT** specify a delayed effective time and date:
  - Application for Reserved Name
  - Notice of Transfer/Cancellation of Reserved Name
  - Application for Registered Name
  - Application for Renewal of Registered Name
  - Application for or Change, Cancellation, or Renewal of Assumed Name
  - Articles of Termination by Organizers
  - Articles of Revocation of Dissolution
  - Articles of Termination
  - Certificate of Reinstatement
  - Cancellation of Certificate of Authority following Administrative Revocation
  - Annual Report
  - Articles of Correction

## **ORGANIZING AN LLC IN TENNESSEE**

### **BY WHOM AND WHEN**

- One or more individuals may act as organizer(s) of an LLC by filing articles of organization with the Division of Business Services.
- Unless a delayed effective date is specified, the LLC is formed and its existence begins on the date that articles are filed with the Division of Business Services. The file date is the date the articles are received and officially date and time stamped by the Division of Business Services, regardless of the method of delivery.

- An LLC engaging in a business that is subject to regulation under another Tennessee statute may organize under the provisions of the Tennessee Limited Liability Company Act only if permitted by, and subject to all limitations of the other statute.

### **LLC NAME**

- As part of the organization process, a name for the new LLC must be chosen that meets the requirements of TCA §48-207-101 mentioned below.
- An LLC name must contain the words “limited liability company” or the abbreviation “L.L.C.,” or “LLC,” or words or abbreviations of like import in another language (provided they are written in roman characters or letters). In the case of a foreign LLC, the name may contain instead the designations allowed by the jurisdiction in which the foreign LLC was formed or organized.
- **Special name requirements for a PLLC.** Instead of the words and abbreviations mentioned above, a professional limited liability company name must contain the words “professional limited company,” “professional limited liability company,” “professional LLC” or “limited liability professional company,” or the abbreviation “P.L.C.,” “P.L.L.C.,” “PLC,” “PLLC” or “L.L.P.C.” In addition, the name may not contain language stating or implying that it is organized for a purpose other than that authorized by TCA §48-248-104 and its articles.
- The name of an LLC or foreign LLC cannot contain the word “corporation” or “incorporated” or an abbreviation of either or both of these words.
- An LLC’s name must be distinguishable from any other name on file with the Division of Business Services. The name must be distinguishable from the names of other existing Tennessee limited liability companies, corporations, both for-profit and nonprofit, limited partnerships, limited liability partnerships, assumed names and any name that has been reserved or registered for use in this State.
- The Division of Business Services reviews a proposed LLC name only to determine whether the name is distinguishable on its face from all other active, reserved and registered names on record in its corporate management database and satisfies the filing requirements under the Tennessee Limited Liability Company Act. The Division’s action in determining name distinguishability is

ministerial and does not serve to insure, regulate or license the use of such a name.

- In general, a name is distinguishable from other names if it contains one or more different letters, and/or words, or it has a different sequence of letters and/or words, from all other active, reserved and registered names in the Division's corporate management system database. Differences between singular and plural forms of words are distinguishing.
- A name is **not** distinguishable by using required ending words such as "incorporated," "corporation," "company," "limited," "limited liability company," "limited partnership," "limited liability partnership" or abbreviations of such words.
- A name is **not** distinguishable by differences in punctuation or capitalization, or the presence or absence of articles, conjunctions or prepositions as symbols or words (including "the," "a," "and," "of," "in," "at" and "plus").
- In determining whether a name is distinguishable on its face from other names, the Division of Business Services compares the proposed name to other names listed in its corporate management system database, and makes no review of other databases, such as state and federal trademarks.
- In determining whether a name is distinguishable on its face from other names, and in determining whether an LLC name satisfies the filing requirements under the Tennessee Limited Liability Company Act, the Division of Business Services makes no determination as to whether the use of a name constitutes unfair competition, unfair trade practice, or name infringement with other businesses already in existence.
- A preliminary check for name availability can be made by using the Business Name Availability database at our website (see page 1) or by telephoning the Division of Business Services at **615-741-2286**. This preliminary check is not a statutory requirement, does not guarantee that the name will be deemed distinguishable at the time of filing, and does not convey any rights to the use of the name.
- An applicant LLC can request to use a name that is not distinguishable from the name used by an existing business under the following circumstances:
  1. The applicant LLC submits an application to use an indistinguishable name, accompanied by payment of an additional

\$20 filing fee. The application must include a written consent that is executed by a person authorized to act for the existing business and indicates that the existing business (1) consents to the use of the name by the applicant LLC and (2) agrees to change its own name to a distinguishable name (or to terminate its existence / withdraw its certificate of authority) within 60 (sixty) days;

2. The applicant LLC submits a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant corporation's right to use the name applied for in Tennessee; or
  3. The applicant LLC submits an application to use an indistinguishable name, accompanied by payment of an additional \$20 filing fee. The application must include a written consent indicating that (1) the existing business and the applicant LLC are under common control, (2) the existing business consents to the use of the name by the applicant LLC and (3) both the existing business and the applicant LLC agree to use the same registered agent and registered office.
- An LLC's name cannot contain language stating or implying that:
    1. The LLC transacts or has power to transact any business for which authorization is required under Tennessee law, unless the appropriate commission or officer has granted such authorization and certifies that fact in writing; or
    2. The LLC is organized as, affiliated with, or sponsored by any fraternal, veterans, service, religious, charitable or professional organization, unless that fact is certified in writing by the organization with which affiliation or sponsorship is claimed; or
    3. The LLC is an agency or instrumentality of, affiliated with or sponsored by the United States or the State of Tennessee or a subdivision or agency thereof, unless such fact is certified in writing by the appropriate official of the governmental entity; or
    4. The LLC is organized for a purpose other than that permitted by TCA §48-203-101 (and, in the case of a PLLC, TCA §48-248-104) and the articles of organization.

- If the LLC's name contains the word "mortgage," "bank," "banks," "banking," "credit union," or "trust," written approval must be first obtained from the Tennessee Department of Financial Institutions before documents can be accepted for filing with the Division of Business Services.
- The use of the word "cemetery" in a company name must be approved in writing and in advance by the Tennessee Department of Commerce & Insurance if the business relates to a cemetery for humans.
- Note: a PLLC may use a name otherwise prohibited if it is the personal name of a member or former member of the domestic or foreign PLLC or the name of an individual who was associated with a predecessor of the PLLC.
- A name may be reserved prior to organization by filing an application for reservation of LLC name with the Division of Business Services (see next section).

### **RESERVED NAME**

- A person may reserve the exclusive use of an LLC name, including an assumed LLC name (see next section), by filing an application for reserved name with the Division of Business Services.
- The application for reserved name must set forth the name and address of the applicant and the name proposed to be reserved.
- If the proposed LLC name meets the name requirements of TCA §48-207-101 mentioned above and is available, the name is reserved for the applicant's exclusive use for a period of four calendar months. At the end of four months, the same party or any other party may apply to reserve the same name.
- The owner of a reserved LLC name, including an assumed LLC name, may transfer the reservation to another person by filing with the Division of Business Services a notice of the transfer signed by the owner. The notice must state the name and address of the transferee.
- The reservation of a specific name may be canceled by filing with the Division of Business Services a notice, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee.

- The Division of Business Services provides form **#SS-4228** for an application for reservation of name, form **#SS-4234** for an application for transfer of a reserved name, and form **#SS-4226** for an application for cancellation of a reserved name. The filing fee for reserving, transferring or canceling a name is **\$20.00**.

## **ASSUMED NAMES**

- An LLC, domestic or foreign, may elect to transact business under an assumed name, provided the assumed name meets the name requirements of TCA §48-207-101 mentioned above (other than the LLC name designations), including name distinguishability.
- An assumed LLC name means any LLC name other than the true LLC name. Assumed names are also known as “fictitious” or “doing business as” (DBA) names.
- An assumed LLC name does **not** include:
  1. The identification by an LLC of its business with a trademark or service mark of which it is the owner or licensed user; or
  2. The use of a name of a division, not separately organized and not containing the word “limited liability company” or an abbreviation of such words, provided that the LLC also clearly discloses its name.
- The name of an LLC with different or without any LLC name designations cannot be filed as an assumed name since such a name is not distinguishable on its face from the LLC’s true name of record.
- Before transacting any business in this State under an assumed name, the LLC by resolution of its governing body must execute and file with the Division of Business Services an application setting forth:
  1. The true LLC name;
  2. The state or country under the laws of which it is organized;
  3. A statement that the business intends to transact business under an assumed LLC name; and

4. The assumed LLC name the business proposes to use.
- The right to use an assumed LLC name is effective for five years from the date of filing and may be renewed for additional five year periods. An application for renewal of an assumed name may be filed within the two months preceding the expiration date of the right to use the assumed name.
  - An LLC may reserve or use no more than five assumed names at a time, but an LLC may cancel and replace (change) assumed names.
  - Approximately three months prior to the expiration date of the right of an active LLC to use an assumed name, the Division of Business Services will prepare and mail to the LLC a copy of form **#SS-4239**, an application for renewal of registration of an assumed name. Upon the timely filing of this form and payment of the **\$20.00** renewal fee, the right to use the assumed name will be renewed for an additional five year period.
  - In addition to form **#SS-4239** mentioned above, the Division of Business Services provides upon request form **#SS-4230** for an application for registration of an assumed name, and form **#SS-4229** for an application to change or cancel an assumed name. The fee for filing an application for registration, cancellation, change or renewal of an assumed name is **\$20.00**.
  - Administrative dissolution/revocation of an LLC automatically inactivates any active, registered assumed name and reinstatement of the LLC does not reinstate the registration of the assumed name. In such a case, a new application for registration of an assumed name must be filed.

## **ARTICLES OF ORGANIZATION**

- The articles of organization are sometimes referred to as “articles” and set forth the items required under TCA §48-205-101 for an individual or a group of individuals to form an LLC. The required items are:
  1. An LLC name that satisfies the name requirements of TCA §48-205-101 (see page 9);
  2. The street address and zip code of the LLC’s initial registered office located in Tennessee, the county in which the office is located, and the name of its initial registered agent at that office;

3. The name, street address and zip code of each organizer;
4. If one or more members will be personally liable for all of the debts, obligations and liabilities of the LLC, information setting forth the specific names of such members (the specifically identified members must also sign the articles);
5. A statement as to whether the LLC will be board-managed or member-managed;
6. The number of members at the date of the filing of the articles;
7. If the LLC is board-managed, and dissolution events may be triggered by an action approved by the governors or a subset of the governors, such a provision must be set forth or the articles must contain a statement that the operating agreement may so provide;
8. If the LLC is board-managed, and transfers of governance rights may be permitted only by consent of the governors or a subset of the governors, such a provision must be set forth or the articles must contain a statement that the operating agreement may so provide;
9. If the existence of the LLC is to begin upon a future date or the happening of a specific event, a statement regarding the future date or description of the happening of the specific event (In no event can the future date or the actual occurrence of the specific event be more than ninety days from the filing of the articles of organization);
10. The street address and zip code of the principal executive office of the LLC and the county in which the office is located;
11. If the LLC has the power to expel a member, a statement that such power exists;
12. If the duration of the LLC is to be limited to a specific period of time or term of years, a statement indicating such limitation and the future date on which dissolution is to occur or the term of years;
13. If the members or parties (other than the LLC) to a contribution allowance agreement have preemptive rights, a statement that such rights exist; and



14.If the LLC, while being formed under Tennessee law, is not to engage in business in Tennessee, a statement that the LLC is prohibited from engaging in business in Tennessee.

- The articles of organization **may** set forth other items such as the names of LLC members, the purpose of the LLC, the names of LLC management, and provisions regulating the affairs of the LLC. The articles **need not** set forth any of the general LLC powers provided in the Tennessee Limited Liability Company Act.
- **Additional requirements for a PLLC.** The articles of a professional limited liability company must state that the entity is a PLLC, that its purpose is to render specified professional services, and that the PLLC has one or more qualified persons as members and no disqualified persons as members.
- If the effective date of formation of the LLC is later than the date of filing of the initial articles of organization, the organizers or any member may, within thirty days after the date of actual formation, file with the Division of Business Services a certificate of formation that states that the LLC was formed and the date of formation.
- If a certificate of formation is not filed within one hundred twenty days from the date of initial filing of the articles, the presumed effective date of the formation is the ninetieth day following the date of filing of the articles.
- As a general rule, the filing of the articles of organization (and the filing of a certificate of formation, if applicable) with the Division of Business Services is conclusive proof that the organizers satisfied all conditions precedent to formation, except in a proceeding by the State to cancel or revoke the formation or existence of the LLC or to dissolve the LLC involuntarily.
- The Division of Business Services provides form **#SS-4449** for filing articles of organization, and form **#SS-4232** for filing a certificate of formation.
- The filing fee for articles of organization is **\$50.00 per member in existence on the date of the filing, with a minimum fee of \$300.00 and a maximum fee of \$3,000.00**. If its articles of organization prohibit the LLC from doing business in Tennessee, the filing fee is \$300.00, regardless of the number of members in existence on the date of the filing. The filing fee for a certificate of formation is **\$20.00**.

- **Additional requirements for a PLLC.** A PLLC may not render professional services until it delivers a certified copy of its articles (or equivalent) to each licensing authority with jurisdiction over a professional service described in the articles.
- If a PLLC ceases to render professional services, it must amend or restate its articles (see next sections) to delete references to rendering professional services and to conform its name to the name requirements for an LLC (see page 9). After such an amendment becomes effective, the PLLC may continue in existence as an LLC under TCA Title 48, chapters 201-247, and is no longer subject to TCA Title 48, chapter 248.

### **SPECIAL PROVISIONS RELATING TO THE FORMATION OF NONPROFIT LIMITED LIABILITY COMPANIES**

- The Tennessee Limited Liability Company Act expressly applies to for-profit companies. See TCA §48-201-103. Effective July 1, 2001, the Tennessee Nonprofit Limited Liability Company Act of 2001 permits the organization of certain nonprofit limited liability companies. In general, all of the filing requirements of the Tennessee Limited Liability Company Act apply to such nonprofit limited liability companies.
- A nonprofit limited liability company is defined as a limited liability company:
  - (1) That is disregarded as an entity for federal income tax purposes; and
  - (2) Whose sole member is a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of the Tennessee Nonprofit Corporation Act and who is exempt from franchise and excise tax as non-for-profit as defined in TCA §67-4-2004(15).
- A nonprofit corporation is defined as a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of the Tennessee Nonprofit Corporation Act and exempt from franchise and excise tax as not-for-profit as defined in TCA §67-4-2004(15).
- A nonprofit corporation may organize a nonprofit limited liability company by filing articles of organization prominently designating it as a nonprofit limited liability company. However, a limited liability company *qualifies* as a nonprofit limited liability company only if the business is disregarded as an entity for federal income tax purposes.

- No more than one nonprofit corporation may be a member of a nonprofit limited liability company.
- The LLC Articles of Organization form **#SS-4449** may be used for filing articles of organization for a nonprofit limited liability company. **If using this form, the box identifying the company as a nonprofit limited liability company must be checked.** The filing fee for such articles of organization is **\$300.00.**
- **Please note that in performing its ministerial filing role, the Division of Business Services does not determine whether the filing of articles of organization for a nonprofit limited liability company is appropriate or proper, and makes no determination as to whether such an entity qualifies for legal or tax status as a nonprofit limited liability company.**

### **ARTICLES OF AMENDMENT**

- An LLC may amend its articles of organization in accordance with the provisions of TCA, Title 48, chapter 209, at any time. An amendment may be executed to add or change a provision of the articles that is statutorily required or permitted, or a provision that is not statutorily required may be deleted.
- Whether a provision is required or permitted in the articles of organization is determined as of the effective date of the amendment.
- An LLC wishing to amend its articles of organization must file articles of amendment with the Division of Business Services setting forth:
  1. The name of the LLC;
  2. The text of each amendment adopted;
  3. The date of each amendment's adoption;
  4. If an amendment was duly adopted by the board of governors without member action, a statement to that effect and that member action was not required; and
  5. If the members duly adopted an amendment, a statement to that effect.

- **Special provisions for amendment to articles pursuant to reorganization.**  
Articles of amendment to carry out a plan of reorganization ordered by a court of competent jurisdiction under federal statute, as provided by TCA §48-209-106, must set forth:
  1. The name of the LLC;
  2. The text of each amendment approved by the court;
  3. The date of the court's order or decree approving the articles of amendment;
  4. The title of the reorganization proceeding in which the order or decree was entered; and
  5. A statement that the court had jurisdiction of the proceeding under federal statute.
- The Division of Business Services provides form **#SS-4247** for filing articles of amendment.
- The filing fee for articles of amendment is **\$20.00**.

## **RESTATED ARTICLES**

- An LLC may restate its articles at any time and may include one or more amendments to the articles. If the restatement contains an amendment to the articles, it must be designated as “Amended and Restated Articles.”
- An LLC wishing to restate its articles must file restated articles with the Division of Business Services setting forth:
  1. The name of the LLC;
  2. All of the filing requirements specified in the previous section on articles;
  3. The text of the restated articles; and
  4. A certificate stating:
    - Whether the restatement contains an amendment to the articles requiring member approval and, if it does not, that the board of governors adopted the restatement; or
    - If the restatement contains an amendment to the articles requiring member approval, the information required by TCA §48-209-104.
- Note: The Division of Business Services certifies restated articles as the articles currently in effect without including the certificate information mentioned above.
- Duly adopted restated articles supersede the original articles and all prior articles of amendment.
- The filing fee for restated articles is **\$20.00**.

## **ARTICLES OF CONVERSION (General or Limited Partnership into LLC)**

- A general or limited partnership organized in this State may be converted to an LLC or PLLC pursuant to the provisions of Tennessee Code Annotated, Title 48, chapter 204.
- After the conversion is approved, the general or limited partnership must file articles of conversion with the Division of Business Services setting forth the following items:
  1. An LLC or PLLC name that satisfies the name requirements of TCA §48-205-101 (see page 9);
  2. A statement that the general or limited partnership was converted to a limited liability company from a general or limited partnership, as the case may be;
  3. The name and principal business address of the former general or limited partnership;
  4. In the case of a general partnership, the name of each of the partners, and in the case of a limited partnership, the name of each of the limited partnership's general partners;
  5. In the case of a general or limited partnership, a statement that the terms and conditions of the conversion have been approved by the unanimous vote of the partners or by the number or percentage specified for conversion in the partnership agreement;
  6. In the case of a limited partnership formed under Tennessee law prior to January 1, 1989, that has not elected to be governed by Title 61, chapter 2, as amended, a statement indicating in which county register of deeds office the certificate of limited partnership and all amendments thereto were filed, including the date of the filings and the books and pages or other file reference numbers; and
  7. The number of members of the LLC at the date of conversion.
- As a general rule, the filing of the articles of conversion with the Division of Business Services is conclusive proof that the partnership satisfied all conditions precedent to formation of an LLC, except in a proceeding by the

State to cancel or revoke the formation or existence of the LLC or to dissolve the LLC involuntarily.

- In the case of a limited partnership, the filing of the articles of conversion shall constitute, and, for purposes of Title 61, chapter 2, shall be deemed to be a certificate of cancellation of the limited partnership.
- In the case of a limited partnership formed under Tennessee law prior to January 1, 1989, that has not elected to be governed by Title 61, chapter 2, as amended, a copy of the articles of conversion must be filed in the register of deeds office in the county in which the certificate of limited partnership was filed.
- A converted general or limited partnership shall be deemed for all purposes to be the same entity that existed before the conversion. The converting general or limited partnership is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion does not constitute a dissolution of the general or limited partnership.
- The Division of Business Services provides form **#SS-4248** for filing articles of conversion.
- The filing fee for articles of conversion is **\$50.00 per member in existence on the date of the filing, with a minimum fee of \$300.00 and a maximum fee of \$3,000.00.** If its articles prohibit the LLC from doing business in Tennessee, the filing fee is \$300.00, regardless of the number of members in existence on the date of the filing.
- Articles of conversion can be amended in the same manner as articles of organization.

#### **ARTICLES OF CONVERSION (Nonprofit Corporation into Nonprofit LLC)**

- The Tennessee Nonprofit Limited Liability Company Act of 2001 permits the conversion of certain subsidiary nonprofit corporations into nonprofit limited liability companies.
- A nonprofit corporation is defined as a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of the Tennessee

Nonprofit Corporation Act and exempt from franchise and excise tax as not-for-profit as defined in TCA §67-4-2004(15).

- A subsidiary nonprofit corporation is defined as a nonprofit corporation whose sole member is a nonprofit corporation.
- A nonprofit limited liability company is defined as a limited liability company:
  - (1) That is disregarded as an entity for federal income tax purposes; and
  - (2) Whose sole member is a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of the Tennessee Nonprofit Corporation Act and who is exempt from franchise and excise tax as non-for-profit as defined in TCA §67-4-2004(15).
- A domestic subsidiary nonprofit corporation may be converted into a nonprofit limited liability company by complying with the approval process set forth in TCA §48-101-707(b) and by filing articles of conversion that include:
  - (1) All information required in articles of organization under the Tennessee Limited Liability Company Act (TCA §48-205-101);
  - (2) A designation of the LLC as a nonprofit limited liability company;
  - (3) A statement that the nonprofit corporation was converted to a nonprofit limited liability company;
  - (4) The name and principal address of the former nonprofit corporation; and
  - (5) A statement that the terms and conditions of the conversion have been approved by the board of directors of the subsidiary nonprofit corporation and the parent nonprofit corporation.
- The Division of Business Services provides form **#SS-4513** for filing articles of conversion of a subsidiary nonprofit corporation into a nonprofit LLC. Articles of Organization, form **#SS-4449** (with the box checked identifying the company as a nonprofit limited liability company) should accompany the articles of conversion. The filing fee for such articles of conversion is **\$300.00**.



- The filing of articles of version constitutes a certificate of cancellation of the subsidiary nonprofit corporation.
- Articles of conversion can be amended in the same manner as articles of organization of a limited liability company.
- **Please note that in performing its ministerial filing role, the Division of Business Services does not determine whether the filing of articles of conversion for a subsidiary nonprofit corporation into a nonprofit limited liability company is appropriate or proper, and makes no determination as to whether such an entity qualifies for legal or tax status as a nonprofit limited liability company.**

#### **ARTICLES OF CONVERSION (For-Profit Corporation into LLC)**

- A domestic for-profit corporation may be converted into limited liability company by complying with the approval process set forth in TCA §48-21-111 and by filing articles of conversion that include:
  - (1) A statement that the corporation was converted to a limited liability company from a corporation;
  - (2) The name and principal business address of the former corporation;
  - (3) The plan of conversion which sets forth:
    - (a) The name of the limited liability company into which the corporation will be converted;
    - (b) The manner and basis of converting the shares of such corporation into membership interests of the limited liability company or a statement that such information is contained in the operating agreement proposed for such limited liability company;
    - (c) The effective date and time of such conversion, if later than the date and time the articles of conversion are filed;
    - (d) The contents of the articles of organization that shall be the articles of organization of the limited liability company unless and until modified in accordance with the provisions of the Tennessee Limited Liability Company Act, chapter 209; and

- (e) A statement that notification of the approval of the conversion will be deemed to be execution of the operating agreement by the persons who will be the members of the limited liability company.
  - (4) A statement that the terms and conditions of the conversion have been approved by the unanimous vote of the shareholders; and
  - (5) The number of members of the limited liability company at the date of conversion.
- The conversion shall take effect upon the date the articles of conversion are filed, or, if later, the date provided in the plan of conversion or articles of conversion.
  - The Division of Business Services provides form **#SS-4498** for filing articles of conversion of a domestic for-profit corporation into a limited liability company. The filing fee for such articles of conversion is **\$50.00 per member in existence on the date of the conversion, with a minimum fee of \$300.00 and a maximum fee of \$3,000.00**. If its articles of organization prohibit the LLC from doing business in Tennessee, the filing fee is \$300.00, regardless of the number of members in existence on the date of the conversion.

### **REGISTERED OFFICE AND REGISTERED AGENT**

- An LLC must **continuously** maintain in this State both a registered office and a registered agent.
- The registered office may (but need not) be the same office as any of the LLC's places of business.
- The registered agent may be:
  1. An individual who resides in this State and whose business office is identical with the registered office;
  2. A for-profit domestic corporation, nonprofit domestic corporation or LLC whose business office is identical with the registered office; or

3. A for-profit foreign corporation, nonprofit foreign corporation or foreign LLC authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.
- If a registered agent resigns or is unable to perform the registered agent's duties, the LLC must promptly designate another registered agent. Failure to maintain a registered agent is grounds for administrative dissolution of the LLC.

### **Change of Registered Office or Agent, by LLC**

- An LLC may change its registered office or registered agent by filing with the Division of Business Services a statement of change that sets forth:
  1. The name of the LLC;
  2. If the current registered office is to be changed, the street address of the new registered office, the zip code for the office, and the county in which the office is located;
  3. If the current registered agent is to be changed, the name of the new registered agent; and
  4. A statement that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.
- The Division of Business Services provides form **#SS-4225** for filing a change of registered office or registered agent, by the LLC.
- The filing fee for a change of registered office or registered agent, by the LLC, is **\$20.00**.

### **Change of Registered Office, by Registered Agent**

- A registered agent who changes the street address of the registered agent's business office may change the street address of the registered office of any LLC for which the registered agent is the registered agent by notifying the LLC in writing of the change and by filing with the Division of Business

Services a statement of change that is signed by the registered agent and which sets forth:

1. The items mentioned above for the statement of change as filed by an LLC; and
  2. A statement that the LLC has been notified of the change.
- The Division of Business Services provides form **#SS-4252** for filing a change of registered office, by the registered agent.
  - The filing fee for changes of registered office submitted at one time by a registered agent is **\$5 per business, with a minimum fee due of \$20.00**. Please contact the Division of Business Services for special procedures and forms applicable to mass registered office changes.

### **Resignation of Registered Agent**

- A registered agent may resign the agency appointment by signing and filing with the Division of Business Services an original statement of resignation, accompanied by the registered agent's certification that the registered agent has mailed a copy of the resignation to the principal office of the LLC by certified mail. The statement may also include a statement that the registered office is also discontinued.
- The agency appointment of a registered agent is terminated, and if applicable, the registered office is discontinued, on the date on which the resignation statement is filed with the Division of Business Services.
- The Division of Business Services provides form **#SS-4227** for filing a statement of resignation of the registered agent.
- The filing fee for a resignation statement is **\$20.00**.

### **CERTIFICATE OF MERGER**

- Mergers are governed by TCA Title 48, chapter 244.
- If a domestic LLC is merging under the provisions of TCA Title 48, chapter 244, the domestic LLC or business entity surviving or resulting in the merger

must file with the Division of Business Services a certificate of merger. The certificate must set forth:

1. The name, jurisdiction and date of formation or organization of each of the LLCs or other entities which is a party to the merger;
  2. A statement that a plan of merger has been approved and executed by each of the LLCs and other business entities which are a party to the merger;
  3. The name and address of the principal executive office or equivalent thereof, of the surviving or resulting entity into which the other entities will merge;
  4. A statement as to whether the surviving entity is an LLC, general partnership, limited partnership, corporation or, if none of these, the form of the surviving entity;
  5. If the merger is not to be effective upon the filing of the plan of merger, the future effective date or time of the merger;
  6. A statement that the plan of merger is on file at a place of business of the surviving or resulting entity, and the address of that location;
  7. A statement that a copy of the plan of merger will be furnished by the surviving or resulting entity, on request and without cost, to any member of any domestic LLC or any persons holding an interest in any other entity that is or was a party to the merger; and
  8. If the surviving or resulting entity is not a domestic LLC, or an entity other than a general partnership organized under the laws of Tennessee, a statement that such surviving or resulting entity agrees that it may be served with process in this State in any action, suit or proceeding and specifying the address to which a copy of such process can be mailed to it by the Secretary of State.
- After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan of merger.
  - Unless a future effective date or time is provided in the certificate of merger, a merger takes effect upon the filing with the Division of Business Services of the certificate of merger.

- The certificate of merger as filed with the Division of Business Services acts as a notice of dissolution and articles of termination for a domestic LLC that is not the surviving or resulting entity in the merger.
- The filing fee for a certificate of merger is **\$100.00**.

## **DISSOLUTION**

A domestic LLC may be dissolved and terminated in the following ways:

1. Nonjudicial termination by organizers;
2. Nonjudicial dissolution by members;
3. Expiration of the LLC's period of duration;
4. The occurrence of an event specified in the articles or operating agreement;
5. The termination of a member's interest (applies to certain LLCs formed prior to July 1, 1999);
6. A merger in which the LLC is not the surviving entity;
7. Administrative dissolution by the Division of Business Services;
8. Administrative revocation by the Tennessee Department of Revenue; or
9. Judicial dissolution.

### **Nonjudicial dissolution and termination by organizers**

- If an LLC has not accepted contributions, the organizers may dissolve and terminate the LLC by filing with the Division of Business Services articles of termination setting forth:
  1. The name of the LLC;
  2. The date of its organization;
  3. A statement that contributions have not been accepted; and
  4. A statement that no debts remain unpaid;
- The existence of the LLC ceases upon the filing with the Division of Business Services of the articles of termination.
- The Division of Business Services provides form **#SS-4244** for filing articles of termination.
- The filing fee for articles of termination is **\$20.00**.

### **Nonjudicial dissolution and termination by members**

- The members of an LLC may dissolve the LLC (1) upon any event of dissolution set forth in the articles, operating agreement or the Limited Liability Company Act requiring member action, (2) by any procedures set forth in the articles or operating agreement, or (3) in accordance with the provisions of TCA §48-245-202.
- If the dissolution is approved pursuant to TCA §48-245-202(a), a notice of dissolution must be filed with the Division of Business Services setting forth:
  1. The name of the LLC; and
  2. If the dissolution is approved pursuant to TCA §48-245-202(b), the date of the meeting at which the resolution was approved, and a statement that the requisite vote of the members was received, or that members validly took action without a meeting.

In other cases, a notice of dissolution must be filed with the Division of Business Services setting forth the name of the LLC.

- An LLC is dissolved when the notice of dissolution is filed with the Division of Business Services.
- A dissolved LLC continues its existence but is not allowed to carry on any business except that essential to liquidate and conclude its business affairs. It may, however, participate in a merger with another LLC or one or more foreign or domestic business entities under Title 48, chapter 244, but the dissolved LLC cannot be the surviving business entity.
- An LLC dissolved by its members may revoke its dissolution at any time prior to the filing with the Division of Business Services of the articles of termination. Revocation of dissolution is accomplished by filing with the Division of Business Services articles of revocation. See page 38, below.



- Once all the business of an LLC has been concluded, and the LLC dissolution has not been revoked, articles of termination must be filed with the Division of Business Services setting forth the following items:
  1. The name of the LLC;
  2. The date of the filing of its articles of organization;
  3. The reason for the filing of the articles of termination;
  4. Whether known and potential creditors and claimants have been notified of the dissolution under TCA §48-245-502; and
  5. Any other information that the person filing the articles of termination determines necessary or desirable to include.
- The existence of the LLC is terminated upon the filing with the Division of Business Services of the articles of termination.
- The Division of Business Services provides the following forms for dissolution and termination:
  - **#SS-4246** for notice of dissolution
  - **#SS-4245** for articles of termination of LLC existence
- The filing fee for a notice of dissolution is **\$20.00**; an additional **\$20.00** fee is required for articles of termination. The filing fee for articles of revocation of dissolution is **\$20.00**.

#### **Dissolution and termination upon expiration of duration**

- An LLC is dissolved upon the expiration of any period of duration fixed in the articles for the duration of the LLC.
- A notice of dissolution must be filed with the Division of Business Services. The notice must contain:
  1. The name of the LLC; and

2. A statement of the expiration date.
- An LLC is dissolved when the notice of dissolution is filed with the Division of Business Services.
  - A dissolved LLC continues its existence but is not allowed to carry on any business except that essential to liquidate and conclude its business affairs. It may, however, participate in a merger with another LLC or one or more foreign or domestic business entities under Title 48, chapter 244, but the dissolved LLC cannot be the surviving business entity.
  - Once all the business of an LLC has been concluded, articles of termination must be filed with the Division of Business Services setting forth the following items:
    1. The name of the LLC;
    2. The date of the filing of its articles of organization;
    3. The reason for the filing of the articles of termination;
    4. Whether known and potential creditors and claimants have been notified of the dissolution under TCA §48-245-502; and
    5. Any other information that the person filing the articles of termination determines necessary or desirable to include.
  - The existence of the LLC is terminated upon the filing with the Division of Business Services of the articles of termination.
  - The Division of Business Services provides the following forms for dissolution and termination:
    - **#SS-4246** for notice of dissolution
    - **#SS-4245** for articles of termination of LLC existence
  - The filing fee for a notice of dissolution is **\$20.00**; an additional **\$20.00** fee is required for articles of termination.

**Dissolution and termination upon occurrence of an event specified in the articles of organization or operating agreement**

- An LLC formed on or after July 1, 1999, or an LLC formed prior to July 1, 1999, that elects in its articles to have the 1999 amendments to the Limited Liability Company Act apply to such LLC, is dissolved upon the occurrence of any event specified in the articles or operating agreement including, but not limited to, events of withdrawal by a member or action or procedure as set forth in the articles or operating agreement.
- If the LLC is dissolved upon the occurrence of any of the aforementioned events, a notice of dissolution must be filed with the Division of Business Services. The notice must contain the name of the LLC.
- An LLC is dissolved when the notice of dissolution is filed with the Division of Business Services.
- A dissolved LLC continues its existence but is not allowed to carry on any business except that essential to liquidate and conclude its business affairs. It may, however, participate in a merger with another LLC or one or more foreign or domestic business entities under Title 48, chapter 244, but the dissolved LLC cannot be the surviving business entity.
- Once all the business of an LLC has been concluded, articles of termination must be filed with the Division of Business Services setting forth the following items:
  1. The name of the LLC;
  2. The date of the filing of its articles of organization;
  3. The reason for the filing of the articles of termination;
  4. Whether known and potential creditors and claimants have been notified of the dissolution under TCA §48-245-502; and
  5. Any other information that the person filing the articles of termination determines necessary or desirable to include.
- The existence of the LLC is terminated upon the filing with the Division of Business Services of the articles of termination.

- The Division of Business Services provides the following forms for dissolution and termination:
  - **#SS-4246** for notice of dissolution
  - **#SS-4245** for articles of termination of LLC existence
- The filing fee for a notice of dissolution is **\$20.00**; an additional **\$20.00** fee is required for articles of termination.

### **Dissolution and termination upon termination of a member's interest**

- An LLC formed prior to July 1, 1999, that does not elect in its articles to have the 1999 amendments to the Limited Liability Company Act apply to such LLC, is dissolved upon the occurrence of any of the following events, subject to the exceptions and qualifications noted below:
  1. Death of any member;
  2. Retirement from membership of any member;
  3. Resignation or other withdrawal of any member;
  4. Acquisition of a member's complete membership interest by the LLC;
  5. Assignment of a member's governance rights under TCA §48-218-102 which leaves the assignor with no governance rights;
  6. Expulsion of any member if expulsion is permitted by the articles of organization;
  7. Bankruptcy of any member;
  8. Dissolution of any member;
  9. Insanity of any member; or
  10. The occurrence of any other event that terminates the continued membership of a member in the LLC.

- **Exceptions:** The above-mentioned occurrences do **not** constitute an event of dissolution under the following circumstances:
  1. The articles or operating agreement specify that none or less than all of these events constitute dissolution events; or
  2. The articles or operating agreement of a board-managed LLC limit the events of dissolution to one or more events that are applicable only to one or more members.
- Even if any of the events mentioned above constitute a dissolution event, an LLC is not dissolved and is not required to be wound up if there is at least one remaining member and the existence and business of the LLC is continued by the consent of a majority vote of the remaining members or such greater vote of the remaining members as provided in the articles of organization. Consent must be obtained no later than ninety days after the dissolution event and is governed by TCA §48-245-101(b).
- If dissolution of the LLC is required under the provisions listed above, a notice of dissolution must be filed with the Division of Business Services. The notice must contain:
  1. The name of the LLC; and
  2. A statement that the continued membership of a member has terminated and the date of that termination.
- An LLC is dissolved when the notice of dissolution is filed with the Division of Business Services.
- A dissolved LLC continues its existence but is not allowed to carry on any business except that essential to liquidate and conclude its business affairs. It may, however, participate in a merger with another LLC or one or more foreign or domestic business entities under Title 48, chapter 244, but the dissolved LLC cannot be the surviving business entity.
- Once all the business of an LLC has been concluded, articles of termination must be filed with the Division of Business Services setting forth the following items:
  6. The name of the LLC;

7. The date of the filing of its articles of organization;
  8. The reason for the filing of the articles of termination;
  9. Whether known and potential creditors and claimants have been notified of the dissolution under TCA §48-245-502; and
  10. Any other information that the person filing the articles of termination determines necessary or desirable to include.
- The existence of the LLC is terminated upon the filing with the Division of Business Services of the articles of termination.
  - The Division of Business Services provides the following forms for dissolution and termination:
    - **#SS-4246** for notice of dissolution
    - **#SS-4245** for articles of termination of LLC existence
  - The filing fee for a notice of dissolution is **\$20.00**; an additional **\$20.00** fee is required for articles of termination.

### **Dissolution and termination of nonsurviving LLC upon merger**

- An LLC is dissolved and terminated upon the effective date of a merger in which the LLC is not the surviving organization.
- A certificate of merger as filed by the surviving or resulting entity with the Division of Business Services acts as a notice of dissolution and articles of termination for a domestic LLC that is not the surviving or resulting entity in the merger.

NOTE: If a dissolved LLC is being wound up and terminated by being merged into a successor organization under TCA §48-245-501(a) and the plan of merger has been approved under §48-244-102(a), then the dissolution may be revoked only after the plan of merger has been properly abandoned under §48-244-101(b).

### **Revocation of Voluntary Dissolution by Members**

- In the case of nonjudicial dissolution by the members as provided in TCA §48-245-101(a)(2), and except as noted below, an LLC may revoke its dissolution at any time **prior** to the filing with the Division of Business Services of the articles of termination.
- After revocation is authorized pursuant to TCA §48-245-601(b), revocation of dissolution is accomplished by filing with the Division of Business Services articles of revocation of dissolution setting forth:
  1. The name of the LLC;
  2. The effective date of the dissolution that was revoked;
  3. The date that the revocation of dissolution was authorized;
  4. If the LLC's governors of a board-managed LLC revoked a dissolution authorized by the members, a statement that revocation was permitted by action by the board of governors alone pursuant to that authorization; and
  5. If member action was required to revoke the dissolution, a statement that the resolution was duly adopted by the members and a copy of the resolution or the written consent authorizing the revocation of dissolution.
- Note: If a dissolved LLC is being wound up and terminated by being merged into a successor organization under TCA §48-245-501(a), and the plan of merger has been approved under §48-244-102(a), then the dissolution may be revoked only after the plan of merger has been properly abandoned under §48-244-101(b).
- The Division of Business Services provides form **#SS-4250** for filing articles of revocation of dissolution, and the filing fee for articles of revocation of dissolution is **\$20.00** (no additional filing fee is necessary for filing the written consent to revocation of dissolution).

### **Administrative Dissolution by Division of Business Services**

- Administrative dissolution may occur for any of the following reasons:
  1. The LLC does not deliver its properly completed annual report to the Division of Business Services within two months after it is due;
  2. The LLC is without a registered agent or registered office in this State for two or more months;
  3. The name of an LLC contained in a document filed with the Division of Business Services fails to comply with the name provisions of TCA §48-207-101 (see page 9);
  4. The LLC fails to notify the Division of Business Services within two months that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
  5. The LLC submits to the Division of Business Services a check, bank draft, money order or other such instrument, for payment of any fee and it is dishonored upon presentation for payment;
  6. A governor, manager, member or other representative of an LLC signs a document such person knew was false in any material respect, with the intent that the document be delivered to the Division of Business Services for filing;
  7. The LLC fails to timely file with the Department of Revenue information required by TCA §48-247-101. (NOTE: This provision applies only to the Department of Revenue survey that was due on April 1, 1998); or
  8. The LLC fails to file applicable reports and/or to pay of applicable fees and taxes to the Tennessee Department of Employment Security (See TCA §50-7-404(k)).
- If the Division of Business Services determines that one or more of the above-mentioned dissolution grounds exist, it serves written notice on the LLC by first class mail.



- If, within two months after service of the written notice, the LLC does not correct each ground for dissolution or demonstrate to the satisfaction of the Division of Business Services that each ground does not exist, the Division of Business Services administratively dissolves the LLC by issuing a certificate of dissolution. The certificate recites the grounds for dissolution and its effective date.
- The certificate of dissolution is filed with the Division of Business Services, and is also served on the LLC by first class mail.
- An administratively dissolved LLC continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under TCA §48-245-501 and notify claimants under §48-245-502.
- The administrative dissolution of an LLC does not terminate the authority of its registered agent.

#### **Reinstatement following Administrative Dissolution by Division of Business Services**

- An administratively dissolved LLC may apply to the Division of Business Services for reinstatement. The application for reinstatement must:
  1. Recite the name of the LLC at its date of dissolution;
  2. State that the ground or grounds for dissolution either did not exist or have been eliminated; and
  3. State an LLC name that satisfies the requirements of TCA 48-207-101 (see page 9).
- If dissolution is based upon dissolution ground #7 (see previous section), then the application for reinstatement will be filed only if the Division of Business Services receives electronic tax clearance verification from the Department of Revenue; if the Division cannot receive such tax clearance, then the application will be rejected and returned to the applicant.
- If dissolution is based upon dissolution ground #8 (see previous section), then the application for reinstatement will be filed only if the Division of Business Services receives (1) certification from the Commissioner of the Department of Employment Security that the LLC has satisfied the requirements for

cancellation of the certificate of dissolution, and (2) tax clearance verification from the Department of Revenue.

- The application for reinstatement must be accompanied by any outstanding (past due) annual reports (furnished by the Division of Business Services upon request).
- If the application for reinstatement contains the required information and the information is correct, the Division of Business Services will cancel the certificate of dissolution, prepare a certificate of reinstatement that recites the Division's determination and the effective date of reinstatement, file the certificate, and also serve the certificate on the LLC.
- If the LLC name in the application for reinstatement is different from the LLC name of the administratively dissolved LLC, the application for reinstatement serves as an amendment to the articles insofar as it pertains to the new LLC name.
- A reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the LLC resumes doing business as if the administrative dissolution had never occurred.
- If the Division of Business Services denies an LLC's application for reinstatement following administrative dissolution, the Division will serve the LLC with a written notice that explains the reason(s) for denial.
- An LLC may appeal the denial of reinstatement to the Chancery Court of Davidson County within thirty days after service of the notice of denial. The LLC appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the certificate of dissolution, the application for reinstatement, and the notice of denial.
- The Division of Business Services provides form **#SS-4240** for filing an application for reinstatement following administrative dissolution.
- The fee for filing an application for reinstatement following administrative dissolution is **\$70.00**. Other fees may also be applicable (for example, fees for filing any missing annual reports).

### **Administrative Revocation by Other Agencies**

- The articles of an LLC may be revoked by the Commissioner of Revenue for failure to file applicable reports and/or for nonpayment of applicable fees and taxes. See TCA §67-4-2016 and §67-4-2116. The articles are automatically revoked upon certification by the Commissioner of Revenue to the Division of Business Services of such noncompliance.

### **Reinstatement following Administrative Revocation by Department of Revenue**

- An LLC whose articles have been administratively revoked by the Commissioner of Revenue may be reinstated by complying with the reinstatement procedures of the Department of Revenue and thereafter by submitting to the Division of Business Services:
  1. Completed outstanding (past due) annual reports (furnished by the Division of Business Services upon request); and
  2. Payment of a \$70.00 reinstatement fee and any fees associated with the outstanding annual reports.

Thereafter, the Division of Business Services will reinstate the LLC as soon as the Division receives electronic tax clearance verification from the Department of Revenue.

- Alternatively, the Department of Revenue may issue to the Division of Business Services a clearance notification indicating that an LLC is entitled to reinstatement under TCA §67-4-2016 or §67-4-2116. Upon receipt of such a notification, the Division may send a notice of reinstatement clearance to the LLC and copies of any outstanding (past due) annual reports. The Division of Business Services will reinstate the LLC's articles upon receipt of the completed outstanding annual reports and the payment of a \$70.00 reinstatement fee and any fees associated with the outstanding annual reports.

### **Termination following Administrative Dissolution/Revocation**

- If an LLC that has been administratively dissolved/revoked wishes to terminate its existence, it may do so without first being reinstated. Termination is accomplished by filing with the Division of Business Services articles of termination following administrative dissolution or revocation setting forth:

1. The name of the LLC;
  2. The date that the termination of existence was authorized;
  3. A statement that the resolution authorizing termination was duly adopted by the members;
  4. A copy of the resolution or the written consent authorizing termination; and
  5. A statement that all the assets of the LLC have been distributed to its creditors and members.
- The Division of Business Services provides form **#SS-4243** for filing articles of termination following administrative dissolution.
  - The filing fee for articles of termination following administrative dissolution or revocation is **\$100.00**. No additional filing fee is necessary for filing the written consent to termination.

### **Judicial Dissolution**

- A court of record with proper venue may dissolve an LLC in accordance with the provisions of TCA Title 48, chapter 245, part 9.
- Dissolution is effective upon the decree of dissolution becoming final and non-appealable. The decree should be filed with the Division of Business Services.
- See also special judicial dissolution procedures relative to professional limited liability companies. TCA §48-248-409.

# **FOREIGN LIMITED LIABILITY COMPANIES TRANSACTIONING BUSINESS IN TENNESSEE**

## **PRECONDITION FOR TRANSACTIONING BUSINESS**

- A foreign LLC (any LLC formed outside Tennessee) wishing to conduct business in Tennessee must obtain a certificate of authority before commencing business activities.
- **Consequences of a foreign LLC transacting business without authority:**
  - A foreign LLC which transacts business or conducts affairs in Tennessee without a certificate of authority is liable to the State for three times the amount of fees, taxes, penalties, and interest for each of the years (or portions thereof) in which it transacted business without a certificate of authority. All amounts due must be paid prior to the filing of the application for certificate of authority.
  - A foreign LLC transacting business in Tennessee without a certificate of authority may not maintain a proceeding in any court of this State until such time as it obtains a certificate of authority. However, the failure to obtain a certificate of authority does not impair the validity of its LLC acts or prevent it from defending itself in a court of this State.
- The Tennessee Limited Liability Company Act does not define “transacting business,” but does provide the following non-inclusive and non-exhaustive list of activities that do **not** constitute transacting business in Tennessee:
  1. Maintaining, defending or settling any proceeding, claim or dispute;
  2. Holding meetings of its members or representatives or carrying on other activities concerning its internal affairs;
  3. Maintaining bank accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign LLC's own securities or appointing and maintaining trustees or depositories with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside Tennessee before they become contracts;
7. Creating or acquiring indebtedness, deeds of trusts, mortgages and security interests in real or personal property;
8. Securing or collecting debts or enforcing mortgages, deeds of trust, and security interests in property securing the debt;
9. Owning, without more, real or personal property (including, for a reasonable time, the management and rental of real property acquired in connection with enforcing a mortgage or deed of trust if the owner is attempting to liquidate the owner's investment and if no office or other agency, other than an independent agency, is maintained in Tennessee);
10. Conducting an isolated transaction that is completed within one month and that is not one in the course of repeated transactions of a like nature; or
11. Transacting business in interstate commerce.

- NOTE: In performing its ministerial filing duties, the Division of Business Services does not resolve or determine whether specific activities constitute "transacting business" under the Tennessee Limited Liability Company Act.
- **Special requirements for a foreign PLLC.** A foreign PLLC is not required to obtain a certificate of authority in Tennessee unless it maintains or intends to maintain an office in Tennessee for conduct of business or professional practice. In all other cases, a foreign PLLC may not transact business in Tennessee until it obtains a certificate of authority.
- A foreign PLLC may not register with the Division of Business Services unless:

1. Its name satisfies the PLLC name requirements (see page 9);
  2. It is organized for one or more of the purposes referenced in and satisfies the requirements of TCA §48-248-104; and
  3. All of its members, all of its governors (or their equivalent), if any, and all managers (or their equivalent) are licensed in one or more states to render a professional service described in its articles; however, if the licensing authority in Tennessee permits persons other than qualified persons to serve as governors, if any, or managers of a PLLC, not less than one half of its governors, if any, and all managers except the secretary and treasurer, if any, of a PLLC shall be qualified persons with respect to the PLLC.
- A foreign PLLC may not render professional services until it delivers a certified copy of its articles (or equivalent) and a certified copy of its certificate of authority to transact business in this State to each licensing authority with jurisdiction over a professional service described in the articles.

### **LLC NAME**

- A foreign LLC name must meet the name requirements of TCA §48-207-101 (see page 9).

### **REGISTERED NAME**

- A foreign LLC may register its name, or an assumed name under which it transacts business, if the name is distinguishable upon the records of the Division of Business Services.
- A foreign LLC registers its name or assumed name by filing with the Division of Business Services an application which:
  1. Sets forth its LLC name or assumed LLC name, the state or country and date of its organization, and a brief description of the nature of the business in which it is engaged; and
  2. Is accompanied by a certificate of existence (or a similar document) from the state or country of organization. **The certificate must**

**bear a date of not more than one month prior to the date the application is filed in this State.**

- A registered LLC name or assumed LLC name is effective upon filing and remains effective until the end of the calendar year in which the registration occurs.
- A foreign LLC may renew an effective registration for successive years by filing a renewal application that complies with the requirements mentioned above for applying for a registered name. The renewal application must be filed between October 1 and December 31 of the preceding year and renews the registration for the following calendar year.
- A foreign LLC whose registration is effective may thereafter qualify as a foreign LLC under that name or consent in writing to the use of that name by an LLC subsequently organized in Tennessee or by another foreign LLC subsequently authorized to transact business in this State. Such registration terminates when the domestic LLC is organized or the foreign LLC qualifies or consents to the qualification of another foreign LLC under the registered name.
- The Division of Business Services provides form **#SS-4236** for an application for registration of a LLC name, and form **#SS-4237** for an application for renewal of registration of a LLC name.
- The filing fee for registering, transferring or canceling a LLC name is **\$20.00**.

### **ASSUMED NAMES**

- See page 13.

### **CERTIFICATE OF AUTHORITY**

- A foreign LLC may apply for a certificate of authority to transact business in this State by filing with the Division of Business Services an application that sets forth:
  1. The name of the foreign LLC;
  2. The jurisdiction and date of its organization;



3. The street address, including zip code, of its registered office in this State and the name of its registered agent at that office;
4. The street address, including zip code, of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal executive office of the foreign LLC or its equivalent;
5. The number of members of the LLC at the date of filing the application for the certificate of authority; and
6. An original certificate of existence (often referred to as a certificate of good standing) from the state or country of organization (**This certificate may not be more than two months old when received by the Division of Business Services**).

Note: the application of a foreign PLLC must also state that it is a PLLC, state that its purpose is to render specified professional services, and include a statement that the requirements of TCA §48-248-501(b)(3) are satisfied.

- An application for certificate of authority that has been marked “Filed” and stamped with the name and title of the Secretary of State constitutes the certificate of authority.
- The Division of Business Services provides form **#SS-4233** for filing an application for certificate of authority.
- The filing fee for a certificate of authority is **\$50.00 per member in existence on the date of the filing, with a minimum fee of \$300.00 and a maximum fee of \$3,000.00.**

### **AMENDED CERTIFICATE OF AUTHORITY**

A foreign LLC authorized to transact business in this State must obtain an amended certificate of authority from the Division of Business Services if:

1. Any statement in the application for a certificate of authority was false when made; or
2. Any matter described in the application for a certificate of authority has changed, making the application inaccurate in any respect.

- The requirements for obtaining an original certificate of authority apply to obtaining an amended certificate (see above).
- An application for amended certificate of authority that has been marked “Filed” and stamped with the name and title of the Secretary of State constitutes the amended certificate of authority.
- The Division of Business Services provides form **#SS-4231** for filing an application for amended certificate of authority.
- The filing fee for an application for amended certificate of authority is **\$20.00**.

### **REGISTERED OFFICE AND REGISTERED AGENT**

- A foreign LLC authorized to transact business in this State must **continuously** maintain in this State both a registered office and a registered agent (see page 25).

#### **Change of Registered Office or Agent, by LLC**

- See page 26.

#### **Change of Registered Office, by Registered Agent**

- See page 26.

#### **Resignation of Registered Agent**

- See page 27.

### **CANCELLATION OF CERTIFICATE OF AUTHORITY**

- A foreign LLC may cancel its certificate of authority by filing with the Division of Business Services an application for cancellation of certificate of authority setting forth:
  1. The name of the foreign LLC and, if different, the name under which it does business in Tennessee;
  2. The name of the jurisdiction under whose law it was organized;
  3. A statement that it is not transacting business in this State and that it surrenders its authority to transact business in this State;
  4. A statement that it either continues its registered agent in this State or revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this State;
  5. If the authority of its registered agent is revoked and the Secretary of State is appointed as its agent for service of process, a mailing address to which the Secretary of State may mail a copy of any process service on the Secretary of State; and
  6. A statement indicating a commitment to notify the Division of Business Services in the future of any change in its mailing address.
- An application for cancellation of certificate of authority that has been marked “Filed” and stamped with the name and title of the Secretary of State constitutes the cancellation of certificate of authority.
- The Division of Business Services provides form **#SS-4241** for filing an application for cancellation of certificate of authority, and the filing fee for an application for cancellation of certificate of authority is **\$20.00**.

### **REVOCATION OF CERTIFICATE OF AUTHORITY**

- Revocation of a foreign LLC’s certificate of authority may occur for any of the following reasons:

1. The foreign LLC does not deliver its properly completed annual report to the Division of Business Services within two months after it is due;
2. The foreign LLC is without a registered agent or registered office in this State for two or more months;
3. The foreign LLC fails to notify the Division of Business Services within two months that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
4. The name of the foreign LLC contained in a document filed with the Division of Business Services fails to comply with the name provisions of TCA §48-246-201;
5. A member or representative of the foreign LLC signs a document knowing it was false in any material respect with intent that the document be delivered to the Division of Business Services for filing;
6. The Division of Business Services receives a duly authenticated certificate from the Secretary of State or other official having custody of LLC records in the jurisdiction under whose law the foreign LLC is organized, stating that it has been dissolved or has disappeared as the result of a merger;
7. The foreign LLC exceeds the authority conferred upon it by TCA Title 48, chapter 246;
8. The foreign LLC submits to the Division of Business Services a check, bank draft, money order or other such instrument, for payment of any fee and it is dishonored upon presentation for payment;
9. The foreign LLC fails to timely file with the Department of Revenue information required by TCA §48-247-101 (NOTE: This provision applies only to the Department of Revenue survey that was due on April 1, 1998);
10. A licensing authority with jurisdiction over a professional service described in a PLLC's articles certifies to the Division of Business

Services that the PLLC has violated or is violating a provision of TCA Title 48, chapter 248; or

11. The LLC fails to file applicable reports and/or to pay of applicable fees and taxes to the Tennessee Department of Employment Security (See TCA §50-7-404(k)).

- If the Division of Business Services determines that one or more of the above-mentioned grounds (other than ground #6) exist, it serves written notice on the LLC by first class mail.
- If revocation is based upon ground #6, then no notice to the foreign LLC is required, and a certificate of revocation may be issued without a two month waiting period.
- If, within two months after service of the written notice, the foreign LLC does not correct each ground for revocation or demonstrate to the satisfaction of the Division of Business Services that each ground does not exist, the Division of Business Services administratively revokes the LLC's certificate of authority by issuing a certificate of revocation. The certificate recites the grounds for revocation and its effective date.
- The certificate of revocation is filed with the Division of Business Services, and is also served on the foreign LLC by first class mail.
- The authority of foreign LLC to transact business in this State ceases on the date shown of the certificate revoking its certificate of authority.
- The administrative revocation of a foreign LLC's certificate of authority appoints the Secretary of State as the foreign LLC's agent for service of process. However, revocation of a foreign LLC's certificate of authority does not terminate the authority of its registered agent.
- NOTE: A foreign LLC's certificate of authority may also be revoked by the Commissioner of Revenue for failure to file applicable reports and/or for nonpayment of applicable fees and taxes. See TCA §67-4-2016 and §67-4-2116.

**REINSTATEMENT FOLLOWING ADMINISTRATIVE REVOCATION  
BY DIVISION OF BUSINESS SERVICES**

- A foreign LLC whose certificate of authority has been administratively revoked may apply to the Division of Business Services for reinstatement. The application for reinstatement must:
  1. Recite the name of the LLC at its date of revocation;
  2. State that the ground or grounds for revocation either did not exist or have been eliminated; and
  3. State a LLC name that satisfies the requirements of TCA 48-246-201 (see page 9).
- If dissolution is based upon dissolution ground #9 (see previous section), then the application for reinstatement will be filed only if the Division of Business Services receives electronic tax clearance verification from the Department of Revenue; if the Division cannot receive such tax clearance, then the application will be rejected and returned to the applicant.
- If revocation is based upon dissolution ground #11 (see previous section), then the application for reinstatement will be filed only if the Division of Business Services receives (1) certification from the Commissioner of the Department of Employment Security that the LLC has satisfied the requirements for cancellation of the certificate of revocation, and (2) electronic tax clearance verification from the Department of Revenue.
- The application for reinstatement must be accompanied by any outstanding (past due) annual reports (furnished by the Division of Business Services upon request).
- If the application for reinstatement contains the required information and the information is correct, the Division of Business Services will cancel the certificate of revocation, prepare a certificate of reinstatement that recites the Division's determination and the effective date of reinstatement, file the certificate, and also serve the certificate on the foreign LLC.
- If the LLC name in the application for reinstatement is different from the LLC name of the foreign LLC whose certificate of authority was administratively revoked, the application for reinstatement serves as an amendment to the certificate of authority insofar as it pertains to the new LLC name.

- A reinstatement relates back to and takes effect as of the effective date of the administrative revocation and the foreign LLC resumes carrying on its business as if the administrative revocation had never occurred.
- The Division of Business Services provides form **#SS-4240** for filing an application for reinstatement following administrative revocation.
- The fee for filing an application for reinstatement following administrative revocation is **\$70.00**. Other fees may also be applicable (for example, fees for filing any missing annual reports).
- If the Division of Business Services denies an LLC's application for reinstatement following administrative revocation, the Division will serve the foreign LLC with a written notice that explains the reason(s) for denial.
- The foreign LLC may appeal the denial of reinstatement to the Chancery Court of Davidson County within one month after service of the notice of denial. The foreign LLC appeals by petitioning the court to set aside the revocation and attaching to the petition a copy of the notice of denial.

#### **REINSTATEMENT FOLLOWING ADMINISTRATIVE REVOCATION BY DEPARTMENT OF REVENUE**

- A foreign LLC whose certificate of authority has been administratively revoked by the Commissioner of Revenue may be reinstated by complying with the reinstatement procedures of the Department of Revenue and thereafter by submitting to the Division of Business Services:
  1. Completed outstanding (past due) annual reports (furnished by the Division of Business Services upon request); and
  2. Payment of a \$70.00 reinstatement fee and any fees associated with the outstanding annual reports.

Thereafter, the Division of Business Services will reinstate the foreign LLC as soon as the Division receives electronic tax clearance verification from the Department of Revenue.

- Alternatively, the Department of Revenue may issue to the Division of Business Services a clearance notification indicating that the foreign LLC is entitled to reinstatement under TCA §67-4-2016 or §67-4-2116. Upon receipt

of such a notification, the Division may send a notice of reinstatement clearance to the LLC and copies of any outstanding (past due) annual reports. The Division of Business Services will reinstate the LLC's certificate of authority upon receipt of the completed outstanding annual reports and the payment of a \$70.00 reinstatement fee and any fees associated with the outstanding annual reports.

### **CANCELLATION OF CERTIFICATE OF AUTHORITY FOLLOWING ADMINISTRATIVE REVOCATION**

- If a foreign LLC whose certificate of authority has been administratively revoked wishes to withdraw from the State, it may do so without first being reinstated. Withdrawal is accomplished by filing with the Division of Business Services an application for cancellation of certificate of authority following administrative revocation setting forth:
  1. The name of the foreign LLC and the date of revocation, its current name, if different, and the name of the jurisdiction under whose law it is organized;
  2. A statement that it is not transacting business in this State and that it surrenders its authority to transact business in this State;
  3. A statement that it either continues its registered agent in this State or revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this State;
  4. If the authority of its registered agent is revoked and the Secretary of State is appointed as its agent for service of process, a mailing address to which the Secretary of State may mail a copy of any process service on the Secretary of State; and
  5. A statement indicating a commitment to notify the Division of Business Services in the future of any change in its mailing address.
- An application for cancellation of certificate of authority following administrative revocation that has been marked "Filed" and stamped with the name and title of the Secretary of State constitutes the cancellation of the certificate of authority.



- The Division of Business Services provides form **#SS-4254** for filing an application for cancellation of certificate of authority following administrative revocation.
- The filing fee for an application for cancellation of certificate of authority following administrative revocation is **\$100.00**.

## ANNUAL REPORTS

- Each LLC registered in Tennessee, regardless of whether domestic or foreign, must file an “annual report” with the Division of Business Services **on or before the first day of the fourth month following the close of the LLC’s fiscal year.**
- **Each annual report form is customized with current information of record relating to the specific LLC to which the form applies. Annual report forms are not available as blank forms and must be filed on the preprinted forms provided by the Division of Business Services.**
- The Division of Business Services automatically prepares and mails the customized annual report form to each active LLC during the ending month of the LLC’s fiscal year (the FYC closing month).
- For businesses formed/qualified on or after July 12, 2001, the FYC closing month of record defaults to December if the FYC closing month is not otherwise designated at the time the formation/qualification documents are filed. The default FYC closing month for businesses formed/qualified prior to that date is the month in which the formation/qualification documents were filed.
- The fiscal year closing month designation can be changed by submitting a written request to the Division of Business Services to change the fiscal year closing. There is no fee for changing the fiscal year closing month.
- Please note, however, that if the FYC closing month change is made, the next annual report will be generated the next time that the new FYC closing month is reached on the calendar and will be due on or before the first day of the fourth month following the new FYC closing month *regardless of the prior annual report cycle*. In addition, any outstanding annual report issued as a result of the prior FYC closing month of record remains due.
- Except as noted below, the information in the annual report must be current as of the date the annual report is executed on behalf of the LLC and must include:

1. The name of the LLC and the jurisdiction under whose laws it is organized;
  2. The street address in Tennessee, including zip code, of its registered office, the county in which the office is located and the name of its registered agent at that office (The address of the registered office must be a complete street address; a post office box number alone is not acceptable);
  3. The street address, including the zip code, of its principal executive office (The address of the principal office must be a complete street address; a post office box number alone is not acceptable);
  4. If the LLC is board-managed (or its equivalent), the names and business addresses, including the zip code, of its governors (or their equivalent);
  5. The names and business addresses, including the zip code, of its managers (or their equivalent);
  6. The federal employer identification number (FEIN) of the LLC, or if such number has not been obtained, a representation that it has been applied for; and
  7. The number of members of the LLC at the date of filing.
- An outstanding (past due) annual report that is being filed for reinstatement purposes should reflect information that was current as of the close of the LLC's fiscal year to which the report applies.
  - The filing fee for annual reports **without** changes to the registered agent information is **\$50.00 per member in existence on the date of the filing, with a minimum fee of \$300.00 and a maximum fee of \$3,000.00**. If its articles of organization prohibit the LLC from doing business in Tennessee, the filing fee is \$300.00, regardless of the number of members in existence on the date of the filing. Any change to the registered agent/office information requires payment of an additional **\$20.00** fee (regardless of the number of registered agent/office changes).

### **Common Filing Rejection Reasons**

- Avoiding the frequently encountered problems noted below will help ensure that an annual report can be timely filed with the Division of Business Services.
  1. The correct fee is not paid. The annual report fee is \$50.00 per member in existence on the date of the filing, with a minimum fee of \$300.00 and a maximum fee of \$3,000.00, and an additional \$20 is required if any change is made concerning the registered agent.
  2. The governors/members are not listed, or no box is checked indicating whether the LLC is board managed or member managed.
  3. The annual report is not signed, the signer's name is not printed or typed, and/or the signer's title is not given.
  4. The annual report is not dated.
  5. The annual report is not typed or filled out in ink.
  6. The annual report is submitted after the LLC has been administratively dissolved. Submittal requires a reinstatement application together with an additional \$70.00 fee.
  7. The principal address or the registered agent address is changed to a post office box.
  8. The report does not list the number of members as of the date of filing.

## ARTICLES OF CORRECTION

- A domestic or foreign LLC may correct a document filed with the Division of Business Services if the document:
  1. Contains an incorrect statement; or
  2. Was defectively executed, attested, sealed, verified, or acknowledged.
- A document is corrected by preparing and filing with the Division of Business Services articles of correction which:
  1. Describe the document (including its filing date) or attach a copy of the document to the articles;
  2. Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
  3. Correct the incorrect statement or defective execution.
- Articles of correction are effective on the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.
- The Division of Business Services provides form **#SS-4242** for filing articles of correction.
- The filing fee for articles of correction is **\$20.00**.

## CERTIFICATIONS

- Three types of certification service are provided by the Division of Business Services:

- **Certificate of existence/authorization** - a document certifying:

1. Whether the domestic LLC is duly organized under the laws of this State, the date of its organization, and the period of its duration if less than perpetual, or whether the foreign LLC is authorized to conduct affairs in this State;
2. Whether all fees, taxes and penalties owed to this State which affect the existence or authorization of the domestic or foreign LLC have been paid (as reflected in the records of the Division of Business Services and the Tennessee Department of Revenue;
3. Whether the most recent LLC annual report as required by the Tennessee Limited Liability Company Act has been filed with the Division of Business Services;
4. Whether articles of dissolution have been filed; and
5. Whether articles of termination of LLC existence have been filed or whether an application for cancellation of certificate of authority has been filed.

Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Division of Business Services may be relied upon as conclusive evidence that the domestic or foreign LLC is in existence or is authorized to transact business in this State and is in good standing.

- **Certificate of fact** - A document certifying filing facts concerning mergers and name changes.

**Mergers.** A certificate of fact lists only recorded information in the Division's files relating to the names of the businesses merged, the name of the surviving business, and the date the merger was filed with the Division. The Division cannot interpret merger documents so as to certify other information that may be contained in such documents, such as the effective date of the merger.

**Name changes.** A certificate of fact lists only recorded information in the Division's files relating to the name of the business prior to the name change, the name of the business after the name change, and the date the name change was filed with the Division. The Division cannot interpret name change documents so as to certify other information that may be contained in such documents, such as the effective date of the name change.

- **Certified copy** - A certificate attached or certification affixed to a copy of a document so as to indicate that the copy is a true and exact copy of a document on file with the Division of Business Services. The certification includes the Secretary of State's signature, or a facsimile thereof, and the Seal of the State of Tennessee. **Such a certification is conclusive evidence that the original document is on file with the Secretary of State, as provided in TCA §48-247-107.**
- Requests for certification services must be in person or by mail; telephone and/or FAX requests cannot be accepted by the Division of Business Services.
- Certification services can be requested by submitting form #SS-4238, an application for certificate of existence/authorization, or form #SS-4161, a document copy request (including request for certificate of fact).
- The certification service fee is **\$20.00** per LLC, regardless of the number of documents or pages certified. The fee must be paid at the time certification services are requested.

## **FREQUENTLY ASKED QUESTIONS**

### **DO YOU HAVE TO USE AN ATTORNEY TO ORGANIZE?**

The statutes do not require the use of an attorney to organize; however, the use of a professional may be advisable.

### **WHAT ARE ARTICLES OF ORGANIZATION?**

Articles of organization is the document filed to become an LLC. It sets forth certain minimum information about the LLC that is required by law.

### **WHAT IS AN ASSUMED NAME?**

An assumed name, also known as a DBA (doing business as) or fictitious name, is a name other than the true LLC name under which the LLC conducts business.

### **WHAT IS A CERTIFICATE OF EXISTENCE?**

The certificate of existence, also known as a certificate of good standing, is a document issued by the state or country of organization that certifies that an LLC is active and has met the filing requirements for that jurisdiction.

### **WHAT IS A REGISTERED AGENT?**

An LLC transacting business in Tennessee is required to have a person or legal entity located in this State designated to receive documents on its behalf, and the registered agent serves this function. The registered agent's name and street address in Tennessee must be on file with the Division of Business Services at all times.

### **WHAT IS THE FEWEST NUMBER OF PEOPLE NEEDED TO ORGANIZE?**

It takes only one person to act as the organizer when an LLC is formed.



**DOES AN LLC NEED A CERTAIN AMOUNT OF CAPITAL TO ORGANIZE?**

Tennessee does not set a minimum amount of capital to organize as an LLC.

**DOES THE LLC HAVE TO BE RECORDED ANYWHERE ELSE?**

Once the articles have been filed with the Division of Business Services, the articles have to be filed with the Register of Deeds in the county in which the LLC has its principal office. Articles of amendment, restated articles and certain other documents must also be filed with the Register of Deeds. A certificate of merger must be filed with the Register of Deeds in the county in which the new or surviving LLC has its principal office.

**DOES A PERSON OWN STOCK IN AN LLC?**

There is no stock ownership in an LLC. Owners of an LLC own a percentage of the business in essentially the same manner as partners in a partnership.

## **GLOSSARY**

**ANNUAL REPORT** - A form provided by the Division of Business Services through which each domestic and foreign LLC annually provides or updates certain information required by the laws of Tennessee.

**APPLICATION FOR CERTIFICATE OF AUTHORITY** - A document that must be filed by a foreign LLC before the LLC may legally transact business in Tennessee.

**ARTICLES OF DISSOLUTION** - A document filed to begin the process of terminating an LLC's existence.

**ARTICLES OF ORGANIZATION** - A document that is used to form an LLC and which sets out essential initial information about the LLC.

**ARTICLES OF TERMINATION** - A document that terminates a domestic LLC's existence following the filing of "articles of dissolution."

**ASSUMED NAME** - The name, other than the actual LLC name, under which an LLC does business.

**CERTIFIED COPIES** - Copies certified by the Secretary of State to be true and exact copies of documents on file with the Division of Business Services.

**DIVISION OF BUSINESS SERVICES** - The division of the Tennessee Department of State that is responsible for executing the duties and functions of the Secretary of State relative to LLC filings in Tennessee.

**DOMESTIC** - An LLC organized in the State of Tennessee.

**FOREIGN** - An LLC organized in a state or country other than Tennessee.

**NONPROFIT CORPORATION** – a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of the Tennessee Nonprofit Corporation Act and exempt from franchise and excise tax as not-for-profit as defined in TCA §67-4-2004(15).

**NONPROFIT LLC** – A limited liability company (1) that is disregarded as an entity for federal income tax purposes, and (2) whose sole member is a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of the Tennessee Nonprofit Corporation Act and who is exempt from franchise and excise tax as not-for-profit as defined in TCA §67-4-1004(15).

**NAME RESERVATION** - The act of securing the use of a name before the formation or registration of an LLC.

**PRINCIPAL EXECUTIVE OFFICE (PRINCIPAL OFFICE)** - The street address where the principal office of the chief manager of the LLC is located. If the LLC has no chief manager, principal executive office means the registered office of the LLC.

**PROFESSIONAL LLC (PLLC)** - An LLC formed to conduct exclusively the activities of a profession licensed by the State of Tennessee.

**QUALIFICATION DATE** - The date a foreign LLC obtains a certificate of authority to transact business in Tennessee.

**REGISTERED AGENT** - A person or legal entity in Tennessee that is designated to accept service of process for an LLC.

**REGISTERED NAME** - An LLC name secured by a foreign LLC before it obtains its certificate of authority.

**REGISTERED OFFICE** - The street address in Tennessee of the registered agent for service of process.

**REINSTATEMENT** - The act of becoming an active LLC after being administratively dissolved or revoked by the Division of Business Services.

**SUBSIDIARY NONPROFIT CORPORATION** - A nonprofit corporation whose sole member is a nonprofit corporation.

**TAX CLEARANCE** - A certificate or notification from the Department of Revenue (or Department of Employment Security) indicating that the business has properly filed all reports and paid all taxes and penalties required by the revenue (or employment security) laws of this State.

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